

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

RANDOLPH R. SCOTT,

Plaintiff,

v.

//

CIVIL ACTION NO. 1:08CV209
(Judge Keeley)

JAMES N. CROSS, Warden,
JOSEPH D. DAVIS, Past Warden,
MR. CRICKET, Case Manager,
MS. CHURCH, Case Manager,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION

On November 25, 2008, the pro se petitioner, Randolph R. Scott ("Scott"), filed a civil rights complaint alleging violation of his Fourteenth Amendment right to due process. Scott contends that even though the Bureau of Prisons has indicated they have secured space in a shelter in Buffalo, New York, for him he has received no confirmation, he is homeless and without immediate family or friends, and upon his release, the BOP will simply give him a bus ticket to Buffalo, New York and \$100.00. The Court referred the complaint to United States Magistrate Judge David J. Joel for initial screening and a report and recommendation in accordance with Local Rule of Prisoner Litigation 83.02.

On December 5, 2008, Magistrate Judge Joel issued a Report and Recommendation recommending that Scott's complaint be **DISMISSED WITHOUT PREJUDICE** for failure to exhaust his administrative remedies. The magistrate judge concluded that because the complaint was signed and notarized on November 21, 2008, forty-nine days

ORDER ADOPTING REPORT AND RECOMMENDATION

after denial of his BP-8, Scott could not have exhausted his administrative remedies.¹

The Report and Recommendation informed Scott that failure to object to the recommendation and report would result in the waiver of his appellate rights on this issue. No objections were filed.²

The Court **ADOPTS** the Report and Recommendation in its entirety and **DISMISSES** this case **WITH PREJUDICE** and **ORDERS** this case **STRICKEN** from the Court's docket.

The Court directs the Clerk of Court to mail a copy of this Order to the pro se plaintiff, certified mail, return receipt requested, and to transmit copies of this Order to counsel of record.

Dated: January 21, 2009

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE

¹ As the Magistrate Judge noted, Scott had twenty days to appeal to the Regional Director who then had a minimum of thirty days and maximum of sixty days in which to respond.

² Scott's failure to object to the Report and Recommendation waives his appellate rights in this matter and relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4th Cir. 1997).